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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 12 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 94-10

Clayton, Missouri

DATE OF HEARING: June 23, 1994

VOLUME: 5

PLACE OF HEARING: Washington, D.C.

PAGES: 697-895

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
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JUL 12 1991

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554 FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

-----)  
In the matter of: )

THE LUTHERAN CHURCH/MISSOURI SYNOD )

MM DOCKET NO. 94-10 )

Clayton, Missouri )  
-----)

The above-entitled matter came on for hearing pursuant to Notice before Arthur I. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom 3, on Thursday, June 23, at 9:30 a.m.

**APPEARANCES:**

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## I N D E X

<u>Witness</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Reverend Bryant E. Clancy, Jr.

By Ms. Schmeltzer		706			
By Mr. Honig			714		
By Ms. Laden			720		

Dennis Stortz

By Mr. Zauner				726	
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Reverend Paul Devantier

By Ms. Schmeltzer		793			
By Mr. Honig	793		805		
By Ms. Laden			849		

## E X H I B I T S

<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>	<u>Rejected</u>
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Lutheran Church

Exhibit No. 2	706	713	
Exhibit No. 7	793	805	

NAACP

Exhibit No. 22		838	
Exhibit No. 23		839	
Exhibit No. 26			848
Exhibit No. 29		846	
Exhibit No. 7, page 6		893	

Hearing Began: 9:30 a.m.

Hearing Ended: 5:30 p.m.

Lunch Break Began: 12:35 p.m.

Lunch Break Ended: 1:45 p.m.

## P R O C E E D I N G S

1  
2 JUDGE STEINBERG: We're on the record now. I have  
3 one preliminary matter, surrebuttal. Do you know what --  
4 which witnesses are going to do that now?

5 MS. SCHMELTZER: It would be Dennis Stortz and/or  
6 Paul Devantier.

7 JUDGE STEINBERG: Okay. Can you reduce the  
8 surrebuttal to writing and exchange it?

9 MS. SCHMELTZER: I may be able to do that.

10 JUDGE STEINBERG: Okay, or if it's going -- let me  
11 put it this --

12 MS. SCHMELTZER: No, it could be lengthy.

13 JUDGE STEINBERG: Okay. Then can you give Mr. Honig  
14 an outline of what the surrebuttal will be so that he can  
15 prepare for cross-examination?

16 MS. SCHMELTZER: Which do you prefer?

17 JUDGE STEINBERG: I'd prefer something in writing,  
18 but realizing the time pressures that you're under I'll leave  
19 it up to you.

20 MS. SCHMELTZER: Okay.

21 JUDGE STEINBERG: If you -- but I think by tomorrow  
22 morning can you put something in Mr. Honig's and Mr. Zauner's  
23 hands --

24 MS. SCHMELTZER: I hope so.

25 JUDGE STEINBERG: -- as to the -- as to -- and then

1 Mr. Honig can prepare for surrebuttal for cross-examination.  
2 I would just caution you that we have -- let me just look at  
3 my notes. Jan Hutchinson's exhibits are Exhibits 7 and 8 and  
4 then Mr. Woodard's exhibits are Exhibit 11. Just make sure  
5 that your surrebuttal is addressed to the matters contained in  
6 this exhibits and don't -- and doesn't go beyond, that --

7 MS. SCHMELTZER: And Mr. Miller.

8 JUDGE STEINBERG: I didn't -- you're going to have  
9 rebuttal of Mr. Miller too -- surrebuttal of Mr. Miller?

10 MS. SCHMELTZER: It's actually going to be  
11 documentary, not --

12 JUDGE STEINBERG: Okay.

13 MS. SCHMELTZER: -- oral.

14 JUDGE STEINBERG: Okay. Well, also whatever you can  
15 turn over to Mr. Honig and we'll make it tomorrow morning.

16 MR. HONIG: Am I correct, Your Honor, in assuming  
17 that the surrebuttal must be limited to responding to  
18 particular statements in the declarations?

19 JUDGE STEINBERG: Yeah.

20 MS. SCHMELTZER: That's what it's going to be.

21 JUDGE STEINBERG: Yeah, but if they want to go  
22 beyond that you can object.

23 MS. SCHMELTZER: It will be limited to responding to  
24 the statements.

25 MR. HONIG: Okay, and I was also concerned with the

1 time that I would receive this, this summary or surrebuttal  
2 testimony because if the witnesses are then going to be cross-  
3 examined on it I'll want to have a few minutes to know the  
4 schedule to call each of these people.

5 JUDGE STEINBERG: Yeah.

6 MS. SCHMELTZER: Sure.

7 JUDGE STEINBERG: Yeah. I would, I would -- if, if  
8 I'd thought of this yesterday I would have had them bring it  
9 in this morning, but I didn't think of it until this morning  
10 and I thought if it's -- I thought if it's -- if, if -- since  
11 I made you do that with Mr. Miller then it's only fair to make  
12 them do that with respect to their surrebuttal witnesses to  
13 give you an opportunity. If you need an opportunity to  
14 prepared, you'll be given the opportunity to prepare for  
15 cross-examination of the, of the surrebuttal.

16 MR. HONIG: No, I don't want the witnesses to have  
17 to stay until Friday so what I was thinking of --

18 JUDGE STEINBERG: Well, they're going to have to  
19 stay till Friday.

20 MR. HONIG: No. If I can get this -- if I can get  
21 the material at the start tomorrow morning and then I can  
22 schedule --

23 MS. SCHMELTZER: Tomorrow is Friday.

24 JUDGE STEINBERG: Tomorrow is Friday.

25 MR. HONIG: Tomorrow is Friday?

1 MS. SCHMELTZER: Yes.

2 JUDGE STEINBERG: Yeah. If my watch is right it is.

3 MR. HONIG: Okay.

4 JUDGE STEINBERG: But anyway, okay, yeah, you'll get  
5 it tomorrow morning first thing.

6 MR. HONIG: Okay.

7 COURT REPORTER: The air conditioner is really loud  
8 so you really have to talk up in order to get a good  
9 transcript.

10 JUDGE STEINBERG: We've been having that problem all  
11 week. We've been having that, we've been having that problem  
12 all week and it's either we're going to, either we're going to  
13 roast or we're not going to -- so okay, another matter. Have  
14 you been -- Mr. Honig, have you been able to, to get the  
15 remainder of Ms. Hutchinson's letter?

16 MR. HONIG: She faxed me something that was the  
17 wrong stuff and I -- she got, she got the wrong letter sent.  
18 So I talked to Blanton this morning and I couldn't reach her  
19 and he is going to find her today and have her fax it but of  
20 course then I won't get it till 6:00 tonight and I'll have it  
21 by tomorrow morning.

22 JUDGE STEINBERG: Okay.

23 MR. HONIG: And Mr. Miller is also going to fax his  
24 vitae or resume today.

25 MS. SCHMELTZER: Well, we've already stipulated in

1 what Mr. Miller's attributes are and I would object to further  
2 evidence on that.

3 JUDGE STEINBERG: Okay. We'll, we'll cross that  
4 path when we come to it. Anybody -- Mr. Zauner brought up the  
5 due date for responses to the petition to enlarge. Has  
6 anybody given a minute's thought to that?

7 MS. SCHMELTZER: Not a lot.

8 JUDGE STEINBERG: Let me -- anybody have a calendar?  
9 What's a week -- what's 10 days from next Monday? Next Monday  
10 is the 27th so that would be the 27th.

11 MR. GOTTFRIED: The 1st, the 1st is Saturday, is  
12 Friday.

13 JUDGE STEINBERG: Okay. Mr. Zauner has got a  
14 calendar.

15 MR. ZAUNER: You want, you want to do it 10 days  
16 from Monday which is the 27th, right?

17 JUDGE STEINBERG: Ten days from Monday which is the  
18 27th.

19 MR. ZAUNER: One, two, three, four, five, six,  
20 seven, eight, nine, ten. That would be the 7th of July.

21 JUDGE STEINBERG: 7th of July, which is what day of  
22 the week?

23 MR. ZAUNER: Thursday.

24 JUDGE STEINBERG: Thursday. Do you want to make  
25 responses due Friday, July 8th? Any objection to that?



1 MR. HONIG: Can I have two weeks because the --  
2 right on the 7th through the 14th I'll be out of town at the  
3 National NAACP Convention. I'd do it in the week after I get  
4 back.

5 MS. SCHMELTZER: Your Honor, I would object to that.  
6 I'd like to get this matter resolved.

7 JUDGE STEINBERG: Well --

8 MR. HONIG: Well, I would too but I don't think  
9 that that's unreasonable. That's been a commitment that I've  
10 had for, for a year and I can't get out of it.

11 JUDGE STEINBERG: Okay. Do you have any objection,  
12 Mr. Zauner, to the --

13 MR. ZAUNER: No, we don't.

14 JUDGE STEINBERG: So, I'll overrule your objection  
15 and we'll have the date for the response to the petition to  
16 enlarge will be July 8th and for the reply, what's the date?

17 MR. HONIG: July 22nd.

18 JUDGE STEINBERG: July 22nd. If you can get it in  
19 earlier, do get it in earlier because the earlier it's in the  
20 earlier that I can look at the whole package and do something.  
21 Okay.

22 MS. SCHMELTZER: Your Honor, I would just ask in  
23 conformance with the prior order that you issued that in his  
24 reply Mr. Honig refrain from making attacks upon opposing  
25 counsel that are unnecessary and, and detrimental to the

1 record.

2 JUDGE STEINBERG: Tone down the language if you can.  
3 There's ways of saying things without calling people names and  
4 --

5 MR. HONIG: I don't think I did, but I'll make sure  
6 that I do.

7 JUDGE STEINBERG: Well, okay. What I, what I don't  
8 need at this juncture -- there's a series of motions to strike  
9 and oppositions and replies and responses and this and that  
10 and the other thing. You know, it's -- we'll have the, the  
11 petition, the responses, the reply, nice clean package and  
12 then, and then we'll get a ruling. Okay. I'm not going to  
13 issue an order reflecting these dates unless somebody asks me  
14 to and I don't hear any requests so just another piece of  
15 paper that we don't have to file. Okay. Anything else  
16 preliminary? Okay. Reverend Clancy, could you stand, please,  
17 and raise your right hand? Okay. Please be seated, and  
18 there's nothing to be nervous about. Relax, take it easy.  
19 We're all nice people and, you know, you'll get out of here in  
20 one piece I'm sure. Could you state your name and address and  
21 phone number for the record, please?

22 WITNESS: My name is Bryant E. Clancy, Jr. I live  
23 at 643 Holland Glen Drive, Baldwin, Missouri 63021. Phone  
24 number is (314) 394-6713.

25 JUDGE STEINBERG: Thank you. Mrs. Schmeltzer?

1 Whereupon,

2 MS. SCHMELTZER: Your Honor, I'd like to have first  
3 marked for identification as Church Exhibit 2 the testimony of  
4 Reverend Bryant Clancy. And I understand the, the reverend is  
5 also a doctor. Do you prefer to be called doctor or reverend?

6 WITNESS: Reverend is fine.

7 JUDGE STEINBERG: Okay. The document described will  
8 be marked for identification as Church Exhibit No. 2 and it's  
9 four pages in length.

10 MS. SCHMELTZER: Yes, that's correct. With an --  
11 yes, with, with -- including the declaration.

12 JUDGE STEINBERG: Right.

13 (Whereupon, the document referred to  
14 as Church Exhibit No. 2 was marked  
15 for identification.)

16 Whereupon,

17 REVEREND BRYANT E. CLANCY, JR.  
18 under penalty of perjury, was called as a witness herein and  
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SCHMELTZER:

22 Q Reverend Clancy, do you have a copy of what's been  
23 marked for identification as Church Exhibit 2 before you?

24 A Yes, I do.

25 Q And do you have any changes or corrections to that

1 testimony?

2 A No.

3 Q Is that testimony true and correct to the best of  
4 your knowledge, information and belief?

5 A It is.

6 MS. SCHMELTZER: Your Honor, I would move the  
7 admission of Church Exhibit 2.

8 JUDGE STEINBERG: Mr. Honig?

9 MR. HONIG: Your Honor, before proceeding I would  
10 like a clarification. I do not know the purpose for which  
11 paragraphs 3 through 5 are offered.

12 MS. SCHMELTZER: Do you want me to respond, Your  
13 Honor?

14 JUDGE STEINBERG: Yes, please. Do -- why don't you  
15 do them one at a time or both, however you see fit.

16 MS. SCHMELTZER: Well, I think I will lump them  
17 together. There are several reasons that these are offered.  
18 For one reason, there is language in the HDO that indicates  
19 that the Commission is concerned that this licensee may have  
20 been discriminating. We feel that the church's work, the  
21 church's record of nondiscrimination is a very important  
22 element in this proceeding not only because it was mentioned  
23 in the HDO in connection with affirmative-action efforts, but  
24 also because Your Honor subsequently enlarged the issues to  
25 include a nondiscrimination aspect. The church's relationship

1 with Concordia Seminary was also a matter that was discussed  
2 in the HDO. As you can see here, the church has a long  
3 history of relationships with -- the church owns colleges and  
4 universities. We thought it was, it was important to get that  
5 into the record as to the church's educational endeavors. And  
6 the church's outreach efforts to minorities are part of its  
7 general efforts toward nondiscrimination and affirmative  
8 action. So, we see this as all very relevant to the issues  
9 that are designated in this case.

10 JUDGE STEINBERG: Okay.

11 MS. LADEN: Your Honor, I agree with Ms. Schmeltzer.  
12 I also wanted to point out that we think this is relevant  
13 because there has been a suggestion in pleadings and, and  
14 perhaps even in the HDO that recruitment may have been focused  
15 on church headquarters and other church institutions and so  
16 therefore I believe that minority representation in those  
17 institutions indirectly may affect recruitment of minorities.

18 JUDGE STEINBERG: Okay. Mr. Honig?

19 MR. HONIG: I think that paragraphs 3 through 5  
20 should be admitted with a limiting instruction as to their  
21 use. First, the language in the HDO that speaks to  
22 discrimination spoke to particular practices of the radio  
23 stations. It does not speak to whether the church itself was  
24 infected as an institution with the disease of discrimination.  
25 It spoke to particular practices of the radio stations and

1 | there is nothing in paragraphs 3 through 5 that speaks to  
2 | particular practices of the radio stations that tend to rebut  
3 | this. Second, while Concordia Seminary in St. Louis, Missouri  
4 | certainly is relevant to the issues in this case, the other --  
5 | there's no -- there's nothing in the HDO and to my knowledge  
6 | nothing in the record suggesting that any of the other of  
7 | these 12 colleges had anything to do with this case. It's  
8 | interesting to know, but it doesn't have anything to do with  
9 | this case. And it might be -- the material might nonetheless  
10 | be marginally relevant to show that, that there were as  
11 | Ms. Laden suggested black Lutherans and a good number of them  
12 | and with that limited purpose of showing that the, that the  
13 | church has among its membership a good many black Lutherans I  
14 | think it's relevant for that limited purpose but that's all  
15 | and I would ask that the Court adopt that limiting  
16 | instruction.

17 | JUDGE STEINBERG: Okay. To the extent that that's  
18 | an objection, it's overruled. If you -- if this -- depending  
19 | on how this material is used in findings, you can reply that I  
20 | shouldn't give much weight to it because, and then you can say  
21 | what you said. But I'm not going to, I'm not going to limit  
22 | it at this juncture because we really don't know how it's  
23 | going to be used, it might be used and it might not be used,  
24 | but I think it is relevant. So, do you have any other  
25 | objections?

1           MR. HONIG: I would also object to the use of this  
2 material to show mitigation through the let's just say the  
3 good deeds of other entities of the church besides the radio  
4 stations. I think the Commission has considered on a number  
5 of occasions in license-renewal proceedings involving EEO  
6 arguments that, for example a radio station may have had  
7 minority programs or had done a lot of community service and  
8 so forth and the Commission always rejects those arguments as  
9 irrelevant to the hiring practices.

10           JUDGE STEINBERG: Well, at this juncture we don't  
11 know that it's going to be used in that manner and if it is  
12 used in that manner you can reply and state what you stated.  
13 Do you have any other --

14           MR. HONIG: Yeah. Well, understanding your ruling,  
15 I'd like to turn to paragraph 6. Your Honor, you have  
16 admitted a good number of statements which are statements of  
17 opinion where those statements of opinion have something to do  
18 with the opinions concerning issues in this case, for example,  
19 whether there, there was discriminatory intent. This  
20 paragraph unlike some of those other statements only speaks to  
21 the integrity, fairness and service to the church and God's  
22 children of Paul Devantier, Reverend Devantier's integrity and  
23 fairness aren't in issue and his service to the church and all  
24 of God's children aren't related to an issue in this case.  
25 Consequently, it's irrelevant and even if relevant would only

1 | be useful as opinion.

2 |           MS. SCHMELTZER: Your Honor, for the same reason  
3 | that similar language was received in connection with Reverend  
4 | Bohlman's testimony, I think that this should likewise be  
5 | received.

6 |           MS. LADEN: Your Honor, I tend to agree with Mr.  
7 | Honig.

8 |           JUDGE STEINBERG: The objection, the objection is  
9 | overruled. Indirectly, Reverend Devantier's integrity is in  
10 | question because we have a misrepresentation and lack of  
11 | candor issue and he was involved in the -- I'm sure in the  
12 | preparation of -- the preparation or the review of the  
13 | material has been questioned. If a finding is made that --  
14 | concerning fairness, service to the church and all God's  
15 | children you can -- I'm just going to leave it the way it is.  
16 | If you want to test it, you may test it through cross-  
17 | examination.

18 |           MR. HONIG: Your Honor, I would next like to turn to  
19 | paragraph 7, and I would object to paragraph 7 and first would  
20 | like to point out that the church has the burden on these  
21 | issues and as part of that burden they have to produce  
22 | testimony for which it's clear that the testimony relates to  
23 | the issue and the issue brackets a specific time period. This  
24 | is a substantive paragraph. It says that -- it speaks to the  
25 | witness's experience in the church but, but does not state the



1 time period of that experience during which the witness  
2 developed his opinion that the church would not discriminate.  
3 It says, "I have been a guest on radio programs," but does not  
4 state whether those programs were aired during the license  
5 term and it states, "In my contact I have not been aware of  
6 any instance of discrimination," but doesn't state whether the  
7 time period during which the witness was -- made it his  
8 business to be aware of such instances if they occurred  
9 included the license term. I don't believe that it's my  
10 responsibility to flush out the church's testimony by deriving  
11 those times through cross-examination. Since the testimony  
12 therefore has, has not -- is not complete and does not relate  
13 to -- does not specify the time period, it's not competent  
14 testimony and it should be stricken.

15 MS. SCHMELTZER: Your Honor, this is based on Mr. --  
16 Reverend Clancy's experience with the church over a long  
17 number of years. We do have a nondiscrimination issue in this  
18 case and yes, the burden is upon us. The burden unfortunately  
19 is upon us to prove a negative. I think it's very important  
20 to have a black minister here speaking about his experience in  
21 the church and with the stations and with Reverend Devantier.  
22 All of Mr. Honig's concerns can be addressed through cross-  
23 examination.

24 MS. LADEN: I agree with Ms. Schmeltzer, Your Honor.

25 JUDGE STEINBERG: Okay. The objection is overruled

1 and of course you're under no obligation to flesh out the  
2 details if you don't want to.

3 MR. HONIG: Your Honor, I would also request a  
4 limiting instruction on paragraph 7 which is --

5 JUDGE STEINBERG: This is his state of mind,  
6 clearly.

7 MR. HONIG: That's right, that it -- well, the first  
8 and third sentences are his state of mind. The second  
9 sentence I suppose is a fact statement.

10 JUDGE STEINBERG: Well, to the extent that it, that  
11 it's his opinion, it's no more than his opinion and which you  
12 can ask the basis for his opinion and so that's, that's  
13 understood. And as I said repeatedly, and I don't want to  
14 have to say it any more, the decision that I make in this case  
15 is going to be based on all the evidence and not merely on one  
16 individual or two individuals' opinions. What the, what the  
17 evidence is going to show it shows and if -- the opinions may  
18 or may not be, be right. So, anything else?

19 MR. HONIG: No.

20 JUDGE STEINBERG: Ms. Laden?

21 MS. LADEN: No, Your Honor.

22 JUDGE STEINBERG: Exhibit 2 is received.

23 (Whereupon, the document previously  
24 identified as Church Exhibit No. 2 is  
25 received into evidence.)

1 MS. SCHMELTZER: Your Honor, Reverend Clancy is  
2 available for cross-examination.

3 JUDGE STEINBERG: Mr. Honig?

4 CROSS-EXAMINATION

5 BY MR. HONIG:

6 Q Good morning, Reverend Clancy.

7 A Good morning.

8 Q Reverend Clancy, are you a salaried employee of the  
9 Lutheran Church/Missouri Synod?

10 A Yes.

11 Q And when did you become a salaried employee?

12 A Well, in 1962 I became an ordained clergyman of the  
13 Lutheran Church/Missouri Synod.

14 Q And during the period between 1983 and January 31st,  
15 1990, did you receive any notices of particular job openings  
16 at KFUE-AM or FM?

17 MS. SCHMELTZER: Objection, Your Honor. That's  
18 beyond the scope of his examination and it's not relevant.

19 MR. HONIG: Your Honor, it's absolutely perfect  
20 impeachment. The witness has testified at great length in his  
21 direct testimony concerning his, his knowledge of the  
22 practices of a radio station and I'm allowed to test that.

23 MS. LADEN: I don't see how the question has  
24 anything to do about -- with the witness's knowledge of the  
25 radio stations. I think it's a question about operational

1 practices at the radio station and I -- from the testimony I  
2 don't see how this witness is qualified to answer.

3 JUDGE STEINBERG: I'm going to ask Mr. Honig to  
4 point me to a sentence, a paragraph, a clause, a word which --  
5 in Reverend Clancy's testimony to which that question is  
6 relevant.

7 MR. HONIG: There are two. First, in paragraph 4  
8 speaks to the church's history of providing educational  
9 opportunities for minorities, strong minority representations  
10 in the church and so forth and certainly --

11 JUDGE STEINBERG: In the schools.

12 MR. HONIG: Yes.

13 JUDGE STEINBERG: The church schools, okay.

14 MR. HONIG: And certainly there has been an issue in  
15 this case relating to the training of students as a role of  
16 the church and consequently I think that opens the question of  
17 whether this witness has received particular job openings.  
18 Certainly, if the church has a person such as Reverend Clancy  
19 as an employee it would be good to know whether since he's  
20 right here he has received these notices inasmuch as he says  
21 this is part of the scope of his responsibility. Now, the  
22 other point --

23 JUDGE STEINBERG: Wait a minute. Where does he say  
24 that receiving notices of job openings is part of the scope of  
25 his responsibilities?

1           MR. HONIG: Hold on. In paragraph 1 he says, "In  
2 all of these capacities one of my personal goals was to  
3 recruit African-Americans to attend the church's colleges,  
4 universities and seminaries and to recruit African-Americans  
5 for full-time church work. Now, since at least for the AM  
6 station, the statement has been made that that is in fact  
7 church work.

8           JUDGE STEINBERG: Why don't you ask Reverend Clancy,  
9 or if you don't ask him I'll ask him. Do you see that in  
10 paragraph 1, the clause for full-time church work? What did  
11 you mean by that?

12           WITNESS: Well, Your Honor, we -- when we talk about  
13 full-time church work we were talking about pastors, teachers,  
14 people on colleges campuses or that whole area. So, it's not  
15 directly relating to employment outside of those particulars.  
16 Professional, professional workers is the phrase we, we use a  
17 lot.

18           JUDGE STEINBERG: Basically, full-time church work  
19 means -- does that mean work -- did that -- did this clause  
20 include work at the church's radio stations?

21           WITNESS: No, no. No, it doesn't.

22           MR. HONIG: I would also point to paragraph 7 where  
23 the witness speaks specifically about the witness's knowledge  
24 of discrimination based on race in its ministries including  
25 the radio ministry and his contact with the stations and thus

1 awareness of racial discrimination. I think the answer to the  
2 question is also germane because it would go to one of the  
3 normal types of contacts through which a person would have  
4 such awareness.

5 JUDGE STEINBERG: I don't follow that at all.

6 MR. HONIG: The reason is that the courts have held,  
7 and if you'd like me to brief it I can --

8 JUDGE STEINBERG: I don't want you to brief it. I  
9 just -- we don't have --

10 MR. HONIG: That -- the courts have held that, that  
11 compliance or lack of compliance with a required affirmative-  
12 action program is, is evidence that can be used in a race-  
13 discrimination case. And consequently, the compliance with  
14 affirmative action manifested for example by receiving job  
15 notices would be, would be -- would go directly to these  
16 questions. Now, I think on redirect counsel would be free to  
17 point out the extent to which there may be other types of  
18 knowledge that the witness might have derived but I think this  
19 is, this is so close to what -- to, to what the witness has  
20 expressly said making reference to the radio ministry and his,  
21 and his contact with the stations that I have to be able to  
22 test that.

23 JUDGE STEINBERG: I really don't see how -- I don't  
24 see the connection between anything you're saying and, and  
25 possibly providing Reverend Clancy with job openings. Let me,

1 let me ask generally, Reverend Clancy in your association with  
2 the Lutheran Church/Missouri Synod have your responsibilities  
3 included the placement of minority individuals in jobs? And  
4 not -- in, in the job market, let me put it that way.

5 WITNESS: No, not, not in the job market. One of  
6 the things that we had tried over, over the years, we have all  
7 of these colleges and universities that are listed there and  
8 of course we're constantly looking for faculty people,  
9 students -- so that we want to reflect society in that way but  
10 not, not specifically to, to find a person for a particular  
11 position at a radio station as such --

12 JUDGE STEINBERG: Or anywhere else.

13 WITNESS: Or anywhere else.

14 JUDGE STEINBERG: Other than, other than positions  
15 at your educational institutions.

16 WITNESS: Right, or -- we call them professional --  
17 workers.

18 JUDGE STEINBERG: Okay.

19 WITNESS: As a, as a clergyman --

20 JUDGE STEINBERG: I'm going to, I'm going to sustain  
21 the objection. If -- I'm just going to -- I'm going to  
22 sustain the objection. I don't think that the question is  
23 related -- I don't think it's based -- you haven't persuaded  
24 me that it's addressed to anything in Reverend Clancy's direct  
25 case. In addition, Reverend Clancy has testified that the

1 area of jobs in general, jobs in radio stations was not within  
2 the scope of his, of his duties. So, even if he had not  
3 gotten notices of job openings, I, I don't think that would be  
4 probative of anything because that was not one of his duties,  
5 even assuming that he didn't, didn't get them. But anyway,  
6 it's, it's basically -- the objection is basically sustained.  
7 It's not addressed to anything in the direct case.

8 BY MR. HONIG:

9 Q Reverend Clancy, do you have any personal knowledge  
10 of the hiring practices of KFUD-AM and FM?

11 A Personal knowledge?

12 Q The specifics of how people came to be hired at the  
13 station. I'm not speaking of, of your opinion. Personal  
14 knowledge of how people come to be hired at the radio station,  
15 the practices.

16 A Well, let me just understand would you mean job  
17 applications or --

18 Q For example, or, or what are the personnel policies,  
19 how are they implemented, who does that. Any of the hiring  
20 practices at the station.

21 A I, I have not seen any kind of a chart or a flow  
22 chart in terms of how it's structured or directly how that  
23 might be worked out. I have not seen that.

24 Q You don't know how people come to be hired at the  
25 radio stations?



1           A     No.

2                   MR. HONIG: I have no further questions.

3                   JUDGE STEINBERG: Ms. Laden?

4                               CROSS-EXAMINATION

5                   BY MS. LADEN:

6           Q     Yes, Your Honor, I have a couple. First of all,  
7 Reverend Clancy, I'm Paulette Laden with the Mass Media  
8 Bureau. Could you tell me what is a synod?

9           A     Well, we have this -- in the Lutheran Church/  
10 Missouri Synod we have this complex system of how we are the  
11 people of God in our, in our time and place. It starts with  
12 congregations and then we have congregations that are formed  
13 in the, in the districts and then districts into the synod.  
14 In some sense people will say, well, the congregation has  
15 created the synod and then they'll say the synod creates  
16 districts. But all together here we have congregations,  
17 districts and the synod. And then the Lutheran Church/  
18 Missouri Synod is focused in a convention at which then the  
19 synod as synod speaks to all of these, to the congregations,  
20 to districts as such as we call that walking together as  
21 synod.

22           Q     Thank you very much for clarifying that. You  
23 indicate in your testimony that you have been interested in  
24 recruiting African-Americans for the work of the church.

25           A     Yes.